District 50 thereafter applied to the Board for a modification of the order insofar as it required Bowman to withhold recognition from District 50 as representative of the employees unless and until it was certified as such representative by the Board (R. 40–43). Relying on the fact that its own voluntary refusal to comply with the filing requirements of Section 9 (f), (g) and (h) of the Act made it currently ineligible for certification, District 50 contended that the Board's order unlawfully restricted District 50's right to represent Bowman's employees and imposed an unlawful penalty for noncompliance with the filing requirements of Section 9 (R. 41–43). The Board, in a Supplemental Decision, adhered to its original order (R. 43–48). Noting that the right of the union to recognition as exclusive bargaining agent derives solely from the Act, the Board held that, in view of the unfair labor practices committed here, it was under a statutory duty to insure that such status thereafter was acquired free from employer assistance. This objective could best be attained through a Board-conducted election and the order merely directs that the union, like any other assisted union, demonstrate that its right to be the exclusive representative of the employees involved has been established in an atmosphere free of restraint and coercion (R. 45–47). Since the remedy was valid as against unlawfully assisted unions which had complied with the filing requirements of Section 9, there was no justifiable reason for according preferential treatment to a noncomplying union by eliminating the certification requirement (R. 47–48). Moreover, the Board further noted, any "penalty" which the union

No. 64

In the Supreme Court of the United States

OCTOBER TERM, 1957

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

DISTRICT 50, UNITED MINE WORKERS OF AMERICA AND BOWMAN TRANSPORTATION, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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references to the Teamsters Union (R. 55–57, 66–68). The Court stated that these references were "susceptible of being construed" as indicating that the Board preferred the Teamsters and hence "might better be omitted so that the company's pledges of non-interference will apply to all labor organizations" (R. 55).

Judge Washington, dissenting, substantially adopted the views expressed by the Board, and further observed that, even were the Board's order invalid, the court exceeded its authority by rewriting the order to prescribe a different remedy instead of remanding the case to the Board (R. 57–61).

SUMMARY OF ARGUMENT

I

A. In remedying unfair labor practices the Board is vested with broad discretionary power to require "such affirmative action * * * as will effectuate the policies" of the Act (Section 10 (c)). In the exercise of this authority the Board here directed, as it has repeatedly required in numerous other instances throughout its twenty-year history, that the employer withhold recognition from an unlawfully supported and assisted union unless and until the affected employees designate it as their representative in a secret ballot election conducted under Board safeguards. The Board's determination that this procedure is necessary to insure that the employees will have the freedom of choice concerning their representation which the Act contemplates is a valid one, resting within the broad discretion committed to the Board by Congress.

The Board's remedy is designed to effectuate the policies of the Act by affording the widest possible selection of bargaining agents to employees while at the same time insuring their complete freedom to accept or reject a previously assisted organization. The "privacy and independence of the voting booth" (*Brooks* v. *National Labor Relations Board*, 348 U. S. 96, 99–100) is essential in these circumstances to safeguard the employees' freedom of choice; otherwise there is a real danger that an employer's past preference will effectively deter them from freely disclosing their desires concerning representation and continue to obstruct their self-organization as contemplated by the Act. In meeting this threat by requiring that any assisted union demonstrate its majority status under the safeguards of a secret ballot election, the Board has adopted a remedial measure upheld by this Court in *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks*, 281 U. S. 548, and applied in like circumstances by various administrative agencies prior to the adoption of the Wagner Act. Consistent Congressional approval, as well as the uniform judicial construction of both the original and the amended Act, confirm that the Board's remedy is wholly appropriate and necessary to restore employee freedom of choice.

B. That an assisted union has not chosen to comply with the filing requirements of the Act and hence is currently ineligible for certification in no way lessens the propriety of the Board's order. A noncomplying union which has accepted unlawful employer support cannot show, any more than can a complying

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cies of the federal Act." *National Labor Relations Board* v. *Gullet Gin Co.*, 340 U. S. 361, 365.

II

In any event, the court below "usurped an administrative function" (*Federal Power Commission* v. *Idaho Power Co.*, 344 U. S. 17, 20) in rewriting the Board's order to prescribe its own remedy for the unfair labor practices here committed. Accordingly, should this Court reject our contention that the Board's order is wholly valid, due regard for the respective functions of agency and reviewing court would suggest a remand of this case to the Board for the purpose of considering alternative remedies.

III

The court below further erred in striking from the Notice to be posted by the Company all references to the Teamsters, the union in which the Company discouraged membership. No contention concerning the propriety of the Notice in this respect was ever raised before the Board or before the court below. The Notice is in any event manifestly proper.

ARGUMENT

I. IN THE EXERCISE OF ITS BROAD DISCRETIONARY POWER TO FRAME REMEDIAL ORDERS AND INSURE THE EMPLOYEES' FREEDOM OF CHOICE IN THE SELECTION OF THEIR BARGAINING REPRESENTATIVE, THE BOARD MAY PROPERLY REQUIRE THAT RECOGNITION BE WITHHELD FROM ANY UNLAWFULLY ASSISTED UNION UNTIL ITS SELECTION IN A BOARD-CONDUCTED ELECTION

Section 10 (c) of the National Labor Relations Act vests in the National Labor Relations Board the power to require any person who has engaged in

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Board throughout its twenty-year history[4] in cases like this where the employer has given illegal assistance to a labor organization and thereby *pro tanto* restricted the employees' freedom of choice.

The principal question presented in this case is whether the broad discretionary power conferred on the Board by Section 10 (c) to insure the employees' freedom of choice through this remedy is lost solely because the unlawfully assisted union has elected not to comply with the filing requirements of Section 9 (f), (g) and (h) of the Act and hence cannot, as long as it remains out of compliance, be certified by the Board. Stated more generally, the issue which lies at the heart of this case is the Board's power to condition the future recognition of an illegally assisted union, irrespective of compliance or noncompliance with the statutory filing requirements, upon a Board election and certification. If the remedy represents a valid exercise of the Board's authority to redress unfair labor practices in the case of an employer-assisted but complying union, the factor of noncompliance should not invalidate the remedy.

In this brief we shall first discuss the basis for the Board's order, pointing out those factors which in the Board's considered judgment require its adoption. We shall show that the order serves, and is reasonably adapted to effectuating, the policies of the Act, and that its appropriateness is confirmed by the uniform judicial construction, legislative history, and other antecedents of the Act. We then argue that the pro-

[4] See n. 5, *infra*, p. 14.

priety of the order is in no way lessened because an assisted union does not choose to comply with the filing requirements of the Act and is therefore ineligible for Board certification; and that the order can in no sense be said to impose a penalty for noncompliance.

A. THE BOARD'S ORDER IS NECESSARY AND PROPER TO REMEDY THE EFFECTS OF UNLAWFUL EMPLOYER ASSISTANCE AND SUPPORT

It is the declared policy of the Act to assure workers, for purposes of collective bargaining, "full freedom of association, self-organization, and designation of representatives of their own choosing." (Section 1 of the original and the amended Act.) Because "collective action would be a mockery if representation were made futile by [such] interferences with freedom of choice" (*Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks,* 281 U. S. 548, 570), Congress, in Section 8 (2) of the original Act and Section 8 (a) (2) of the amended Act alike, outlawed all forms of support or domination by an employer of any labor organization.

Violations of this Congressional prohibition have confronted the Board since its inception with the task of restoring to the employees involved that "[f]reedom of choice in the selection of representatives" which "is the essential foundation of the statutory scheme." *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks,* 281 U. S. 548, 569. To this end the Board, with judicial approval, has required since its earliest days the permanent withdrawal of recognition from, and complete disestablishment of, any labor

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79 Cong. Rec. 7659–7660, reprinted in Legislative History of the National Labor Relations Act, 1935, at pp. 2373–2374 — 17

79 Cong. Rec. 8538, reprinted in Legislative History, 1935, at p. 3008 — 18

93 Cong. Rec. 6443, 4196, A–2253, reprinted in Legislative History of the Labor Management Relations Act, 1947, at pp. 1539, 1103, 1525 — 19

Cox, *Some Aspects of the Labor Management Relations Act, 1947*, 61 Harv. L. Rev. 1 (1947) — 22, 26

Developments in the Law—The Taft-Hartley Act, 64 Harv. L. Rev. 781 (1951) — 16, 27

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Greenwald, *Non-Communist Affidavits: Taft-Hartley Sound and Fury*, 12 La. L. Rev. 497 (1952) — 26

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H. Rept. No. 245, 80th Cong., 1st Sess., pp. 28–29, 38, 42, reprinted in Legislative History, 1947, at pp. 319–320, 329, 333 — 19

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S. Rept. No. 374, Views of Certain Members of the Joint Committee on Labor-Management Relations, 81st Cong., 1st Sess., pp. 13–14 26

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The jurisdiction of this Court rests on 28 U. S. C. 1254 and Section 10 (e) of the National Labor Relations Act, as amended.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C. 151, *et seq.*), are set out in the Appendix, *infra*, pp. 36–40.

QUESTIONS PRESENTED

1. Having found that the employer in this case unlawfully supported and assisted District 50, the Board issued its customary order directing that the employer, *inter alia*, withhold recognition from that union unless and until it was certified by the Board as the bargaining representative of the employees. The first question presented is whether this remedy is rendered inappropriate because the union's refusal to comply with the filing requirements of Section 9 (f), (g) and (h) makes it currently ineligible for certification.

2. Whether, assuming that the Board's order was in excess of its authority, the court of appeals erred in rewriting the order instead of remanding the case to the Board.

3. Whether the court below improperly interfered with the agency's discretion to fashion its remedy by eliminating from the Notice prescribed by the Board all references to the Teamsters Union, which had been disadvantaged by the employer's several unfair labor practices.

conceives has been imposed upon it, stems from the union's failure to comply with the statutory filing requirement—a disability which lies within the union's own power to remove.

B. THE DECISION BELOW

The court below unanimously sustained the Board's findings and conclusions with respect to Bowman's unfair labor practices and illegal support to District 50 as "clearly" evidenced by the record. The court, however, with Judge Washington dissenting, held that the Board lacked authority to require that Bowman withhold recognition from District 50 unless and until that union was certified by the Board (R. 50–53). The majority's view was that this Court's decision in *United Mine Workers* v. *Arkansas Oak Flooring Co.*, 351 U. S. 62, 71–72, precluded the Board from making certification a prerequisite to recognition (R. 53–54). Accordingly, the court directed that the Board's order be modified, insofar as Bowman was required to withhold statutory recognition from District 50 unless and until that union was certified, by adding the phrase "or shall have been freely chosen as such [statutory representative] by a majority of the employees after all effects of unfair labor practices have been eliminated" (R. 54, 57, 66–67). In so doing the majority indicated that, in its view, the ill effects of the unfair labor practices would be removed by Bowman's compliance with the remaining terms of the Board's order, including the posting of notices for 60 days (R. 54–55).

In addition, the court below modified the Notice prescribed by the Board by deleting from its terms all

union, that the Board's order "is a patent attempt to achieve ends other than those which can fairly be said to effectuate the policies of the Act" and the order accordingly "should stand." *Virginia Electric & Power Co* v. *National Labor Relations Board*, 319 U. S. 533, 540. Moreover, to permit a noncomplying union, as results from the decision below, to enjoy an advantage denied complying unions by the Act would tend to frustrate the Congressional purpose underlying Section 9 (f), (g) and (h) and would lend encouragement to noncompliance.

The contrary view of the court below finds no support in the decision of this Court in *United Mine Workers* v. *Arkansas Oak Flooring Co.*, 351 U. S. 62. Indeed, the holding that a noncomplying union need not necessarily establish its representative status through a Board election was there premised upon the unquestioned assumption that the union, unlike here, was the freely chosen agent of employees uninfluenced by employer unfair labor practices.

Nor can the respondent union show, as it claims, that the Board's order is "penal" rather than "remedial." In adopting a measure uniformly applied to remedy like employer misconduct, the Board has added no special liability because of respondent's noncomplying status; rather, it has merely refused to discriminate in favor of respondent or any other noncomplying union. Moreover, since the Board's order is designed and necessary to restore to the employees complete freedom of choice, the "injury" claimed by respondent is at best "merely an incidental effect of an order which in other respects effectuates the poli-

unfair labor practices proscribed by the Act "to cease and desist from such unfair labor practice, and to take such affirmative action * * * as will effectuate the policies of this Act." The power thus delegated to the Board is a broad discretionary one. In selecting the appropriate remedy for a given unfair labor practice, the Board is not bound to choose that which may subsequently appear most desirable to the courts. For, as this Court has frequently observed, "[t]he Board not the courts determines under this statutory scheme how the effect of unfair labor practices may be expunged." *National Labor Relations Board* v. *Link-Belt Co.*, 311 U. S. 584, 600. As this Court has many times pointed out, "the relation of remedy to policy is peculiarly a matter for administrative competence" and "courts must not enter the allowable area of the Board's discretion and must guard against the danger of sliding unconsciously from the narrow confines of law into the more spacious domain of policy." *Phelps Dodge Corp.* v. *National Labor Relations Board*, 313 U. S. 177, 194; *International Association of Machinists* v. *National Labor Relations Board*, 311 U. S. 72, 82; *National Labor Relations Board* v. *Gullet Gin Company*, 340 U. S. 361, 363; *National Labor Relations Board* v. *Link-Belt Co.*, 311 U. S. 584, 600.

In the exercise of this authority the Board in the instant case directed the employer to withhold recognition from the unlawfully assisted union unless and until the affected employees should designate it as their bargaining representative in a secret ballot election conducted under Board safeguards. The remedy adopted here has been repeatedly applied by the

organization so "corrupted" by employer domination, support, and interference as to be inherently incapable of ever affording employees "an agency for collective bargaining." *National Labor Relations Board* v. *Pennsylvania Greyhound Lines*, 303 U. S. 261, 268, 271. Concurrently, the Board recognized that where a union could be purged of employer influence, as, for example, in the case of a union affiliated with a national labor organization, its disestablishment would forever deprive employees of an agent which, if freely chosen, was potentially capable of acting as their true representative. In order to afford workers the widest possible selection of bargaining agents, while at the same time insuring to them under appropriate safeguards a free choice to accept or reject a previously assisted organization, the Board throughout its history has adapted its remedy in these circumstances "to the situation which calls for redress" (*National Labor Relations Board* v. *Mackay Radio & Telegraph Co.*, 304 U. S. 333, 348) by requiring that recognition be withheld from any supported union unless and until chosen in a Board conducted election.[5]

Such a provision appropriately serves to effectuate the policies of the Act. In predicating future recognition of an assisted union upon the "most reliable means of ascertaining the deliberate will of the employees"—i. e., an "election * * * conducted under

[5] This remedy apparently was first adopted in *Lenox Shoe Co.*, 4 NLRB 372, 388, and has since been repeatedly applied by the Board. See, *e. g.*, the following annual reports of the Board: Eighth (1943), p. 36; Thirteenth (1948), pp. 50–51; Twenty-First (1956), pp. 79–80.

proper safeguards" (*National Labor Relations Board* v. *Century Oxford Mfg. Corp.*, 140 F. 2d 541, 542–543 (C. A. 2)) the order is plainly designed to permit the employees to express their choice in an atmosphere as free of restraint and coercion as is possible. It is not always true, as the court below thought (R. 55), that "it may reasonably and safely be assumed that normaley has been restored" after appropriate compliance notices by the employer. Where the weight of an employer's economic power has been thrown behind a favored union so as to have coerced its majority acceptance, as here, the employer's mere cessation of like acts, withdrawal of recognition, and declaration of future neutrality, though of aid, will not necessarily suffice to wholly "dissipate the unwholesome effect of [his] violations of the Act" (*Franks Bros. Co.* v. *National Labor Relations Board*, 321 U. S. 702, 704). As this Court has recognized, in *National Labor Relations Board* v. *Link-Belt Co.*, 311 U. S. 584, 600, when employees are solicited by a union so favored, there is no reason to "assume that [they] will be free from improper restraints" whatever has been their "employer's later show of impartiality." So long as public disclosure of their allegiance is thus compelled, workers may well hesitate to reject, through fear of reprisal, or may eagerly accept, through hope of individual gain, any union which their employer has favored.

The "advantageous anonymity of a * * * Board" election (*National Labor Relations Board* v. *Appalachian Electric Power Co.*, 140 F. 2d 217, 222 (C. A. 4)) is thus essential to neutralize the threat which a

previously assisted union, by merely continuing to exist on the organizational scene, inevitably presents to full freedom of employee choice. Though the employer engages in no further overt acts of interference, there is real danger that his past preference will continue effectively to deter employees from freely disclosing their wishes concerning representation to any union which they, with good reason, have identified with management.[6] Unless secrecy of voting is afforded at the crucial moment of choice, there can be no assurance that any majority status which the union thereafter obtains is premised on that full freedom of choice which the Act seeks to foster and secure. In these circumstances the "safeguards to voluntary choice," which is the indispensable condition for genuine collective bargaining, can only be provided by "the privacy and independence of the voting booth". (*Brooks* v. *National Labor Relations Board*, 348 U. S. 96, 99–100).[7]

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[6] See *National Labor Relations Board* v. *Pacific Greyhound Lines, Inc.*, 303 U. S. 272, 274–275; *Madden* v. *Brotherhood and Union of Transit Employees of Baltimore*, 147 F. 2d 439, 441 (C. A. 4); *Westinghouse Electric & Mfg. Co.* v. *National Labor Relations Board*, 112 F. 2d 657, 660, 661 (C. A. 2), affirmed, 312 U. S. 660; *Developments in the Law—The Taft-Hartley Act*, 64 Harv. L. Rev. 781, 822 (1951); *Disestablishment: NLRB's Waning Remedy and the International Unions*, 29 Ind. L. J. 219, 236 (1954).

[7] Accord: *National Labor Relations Board* v. *A. J. Tower Co.*, 329 U. S. 324, 332; *National Labor Relations Board* v. *Botany Worsted Mills*, 133 F. 2d 876, 881 (C. A. 3), certiorari denied, 319 U. S. 751; *National Federation of Railway Workers* v. *National Mediation Board*, 110 F. 2d 529, 533, 536–537 (C. A. D. C.), certiorari denied, 310 U. S. 628; *National Labor Relations Board* v. *J. I. Case Co.*, 201 F. 2d 597, 600 (C. A. 9); 18 Am. Jur., *Elections*, Secs. 212, 234.

That the Board's order is wholly appropriate and necessary to "translate into actuality the policies of the Act" (*Phelps Dodge Corp.* v. *National Labor Relations Board*, 313 U. S. 177, 188) finds confirmation in the legislative history, as well as other antecedents, of the Act. In framing the Wagner Act Congress clearly evidenced its intent that such remedial action be taken in meeting the problem of company supported or dominated unions. Citing the experience of the Board's immediate predecessor—the National Labor Relations Board acting under Section 7 (a) of the National Industrial Recovery Act—Senator Wagner and others throughout the hearings stressed that, if employees subjected to such influences were in fact to "ha[ve] a free choice" concerning their representation, it was of vital importance to hold secret ballot elections, supervised by an impartial governmental body in which "workers * * * felt that their identity was not to be disclosed and they would be protected from any reprisal."[8] Governmentally supervised elections were similarly viewed as necessary, where carriers had interfered in the selection of employee representatives by supporting and assisting unions, in determining representation questions arising under Section 7 (e) of the Emergency Railroad

[8] Hearings Before the Committee on Education and Labor on S. 2926, 73rd Cong., 2d Sess., pp. 13, 85, 146, 149, 207; Hearings Before the Committee on Education and Labor on S. 1958, 74th Cong., 1st. Sess., pp. 42, 98, 446–447; 79 Cong. Rec. 7659–7660; reprinted, respectively, in Legislative History of the National Labor Relations Act, 1935 (Govt. Print. Off., 1935), at pp. 43, 115, 176, 179, 237, 1418, 1474, 1832–1833, 2373–2374.

Transportation Act of 1933," to which Congress also looked as an authoritative precedent for the provisions of the original Act.[10] Indeed, the committee reports left no doubt concerning the propriety of like measures under the Act by citing, as illustrative of the broad power conferred upon the Board, the decree affirmed by this Court in *Texas & New Orleans R. Co. v. Brotherhood of Railway Clerks*, 281 U. S. 548.[11] A provision affording employees the opportunity to participate in a secret ballot election to be conducted under the supervision of the lower court itself in determining their future representation was there upheld, *inter alia*, as no more than was necessary for a "restoration of the *status quo*," even though, by the further terms of the decree, the unlawfully dominated union was disestablished and thus permanently removed from the organizational scene. 281 U. S. at 555–557. The committee's specific recognition of the provisions there approved as a means of affording

[9] Bulletin of the United States Bureau of Labor Statistics No. 634, *Characteristics of Company Unions, 1935*, p. 223, (1937).

[10] Report of Senate Committee on Education and Labor, Rept. No. 573, 74th Cong., 1st Sess., pp. 9–10; Report of House Committee on Labor, Rept. No. 972, 74th Cong., 1st Sess., pp. 15–16, reprinted in Legislative History of the National Labor Relations Act, 1935, *supra*, at pp. 2308–2310, 2971–2972.

[11] Report of Senate Committee on Education and Labor, Rept. No. 573, 74th Cong., 1st Sess., pp. 9, 17; 79 Cong. Rec. 8658, reprinted in Legislative History of the National Labor Relations Act, 1935, *supra*, at pp. 2308, 2317, 3008. That Congress intended to integrate into the statutory scheme "the policy of the Railway Labor Act," particularly as set out by the decision of this Court in "the *Railway Clerks* case," is clear. *National Labor Relations Board* v. *Pennsylvania Greyhound Lines*, 303 U. S. 261, 266–267. And see *Phelps Dodge Corp.* v. *National Labor Relations Board*, 313 U. S. 177, 188, n. 6.

"employees * * * free choice" (fn. 11, *supra*) following violations of Section 8 (2) is substantial evidence that the like remedy devised here by the Board is "of a kind contemplated * * * in the enactment of § 10 (*c*)" and well "within its terms." *National Labor Relations Board* v. *Pennsylvania Greyhound Lines*, 303 U. S. 261, 268.

In the course of adopting the 1947 ("Taft-Hartley") amendments to the Act, Congress again manifested its approval of the remedy here under review. Making clear that it had no more solicitude for company supported or dominated unions than before, Congress specifically rejected all attempts to amend Section 8 (2) of the original Act and carried its proscriptions over unchanged in Section 8 (a) (2) of the amended Act.[12] Congress studied in great detail the remedial policy which the Board had followed in cases of unlawful employer support or domination and evidenced its complete satisfaction with the measure here adopted; it differed only with the Board's practice of not allowing unaffiliated unions the same opportunity to reestablish their majority status by participating in a Board election as was afforded those unions affiliated with a national or international organization.[13] Thereafter, in its final report, the Joint

[12] See S. Rept. No. 105, 80th Cong., 1st. Sess., p. 12; 93 Cong. Rec. 6443, 4196, A-2253, reprinted in Legislative History of the Labor Management Relations Act, 1947 (Govt. Printing. Off., 1948), at pp. 418, 1539, 1103, 1525.

[13] See H. Rept. No. 245, 80th Cong., 1st Sess., pp. 28-29, 38, 42; S. Rept. No. 105, 80th Cong., 1st Sess. 3, 12-13, 25, 26; H. Conf. Rept. No. 510, 80th Cong., 1st Sess., pp. 40-41, 54-55, reprinted in Legislative History of the Labor Management Relations Act, 1947, supra, at pp. 319-320, 329, 333, 409, 418-419, 431,

Committee of Congress, specifically created to oversee the operation of the amended Act, similarly showed awareness of this remedial measure. It noted with approval that the amendments to Section 9 (c) (2) and 10 (c) of the original Act, requiring that in cases involving violations of Section 8 (a) (1) and (2) the same regulations and rules of decision shall apply to all unions without regard to their affiliated status, had been effectuated by the Board's revision of its practice so as to disestablish all dominated unions and permit all illegally supported unions to regain representative status following a Board election resulting in their certification. Report of the Joint Committee on Labor-Management Relations, S. Rept. No. 986, Part 3, 80th Cong., 2d Sess., pp. 67–68, 99–100.[14]

The uniform judicial construction given to both the original and the amended Act fully accords with

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432, 544–545, 558–559. See also the statements in this connection by Senators Taft, Ball, Smith, Ellender, and Murray, all members of the Senate Labor Committee, at 93 Cong. Rec. 3838, 4029–4030, 4137, 4143, 4196, 4283, 5015, A–2253, 6444, 6504, 6506, reprinted in Legislative History of the Labor Management Relations Act, 1947, *supra*, at pp. 1013–1014, 1036–1037, 1066–1067, 1077, 1103, 1149, 1498, 1525, 1541, 1582, 1584–1585.

[14] Consonant with Sections 9 (c) (2) and 10 (c) as amended, the Board has wholly abandoned its former policy and has consistently directed the disestablishment of any affiliated, as well as unaffiliated, union which it finds to have been employer dominated. National Labor Relations Board Thirteenth Annual Report, (1948) pp. 50–51; *National Labor Relations Board* v. *Jack Smith Beverages, Inc.*, 202 F. 2d 100, 101–102 (C. A. 6), certiorari denied, 345 U. S. 995; *National Labor Relations Board* v. *Polynesian Arts, Inc.*, 209 F. 2d 846, 847 (C. A. 6).

these consistent manifestations of Congressional intent. Apart from the opinion below, every court of appeals which has considered the problem has approved the Board's remedy as wholly appropriate to dissipate the effects of unlawful employer assistance and support and to insure a "free choice."[15] As stated by the Eighth Circuit in *Elastic Stop Nut Corp.* v. *National Labor Relations Board*, 142 F. 2d 371, certiorari denied, 323 U. S. 722, in upholding an order identical to that at bar (142 F. 2d at p. 380):

> The immediate object of a proceeding before the Board is to prevent unfair labor practices which tend to thwart the policy of the Act by interfering with the freedom of the employees to designate bargaining representatives of their own choice. Under sec. 10 (c) of the Act * * * the Board is given authority to take such affirmative remedial action as will effectuate the

[15] See, *e. g.*, *National Labor Relations Board* v. *La Salle Steel Co.*, 178 F. 2d 829, 835–836 (C. A. 7), certiorari denied, 339 U. S. 963; *Elastic Stop Nut Corp.* v. *National Labor Relations Board*, 142 F. 2d 371, 380 (C. A. 8); *National Labor Relations Board* v. *Parker Bros. & Co.*, 209 F. 2d 278, 279, 280 (C. A. 5); *National Labor Relations Board* v. *Braswell Motor Freight Lines*, 209 F. 2d 622, 624, 625 (C. A. 5); *National Labor Relations Board* v. *Wemyss*, 212 F. 2d 465, 473–474 (C. A. 9); *Independent Employees Ass'n.* v. *National Labor Relations Board*, 158 F. 2d 448, 456–457 (C. A. 2), certiorari denied, 333 U. S. 826; *National Labor Relations Board* v. *Norfolk Shipbuilding & Drydock Corp.*, 172 F. 2d 813, 816 (C. A. 4); *National Labor Relations Board* v. *John Engelhorn & Sons*, 134 F. 2d 553, 558 (C. A. 3); *Warehousemen's Union* v. *National Labor Relations Board*, 121 F. 2d 84, 92–93 (C. A. D. C.), certiorari denied, 314 U. S. 674. See also *District 50 United Mine Workers* v. *National Labor Relations Board*, 234 F. 2d 565, 571 where the Fourth Circuit recognized that the Board's order would be appropriate if applied to a complying union.

> purpose of the Act, and this extends to the power to take appropriate steps to nullify the effect of the employer's illegal conduct and prevent its enjoyment of any advantage gained thereby, for, unless the effect of the unfair labor practices is completely neutralized, there is no assurance that restraint is no longer present and that freedom of choice is guaranteed.

In sum, in providing for an election under Board safeguards in which employees may accept or reject any union which has been the beneficiary of unlawful employer assistance and support, the Board's remedy goes no further than is necessary to restore complete freedom of choice. See Cox, *Some Aspects of the Labor Management Relations Act, 1947*, 61 Harv. L. Rev. 1, 9, 23 (1947).

B. THE PROPRIETY OF THE BOARD'S ORDER IS NOT LESSENED BY THE FACT THAT THE UNLAWFULLY ASSISTED UNION IS NOT IN COMPLIANCE WITH SECTION 9 (f), (g) AND (h)

Relying upon the Court's decision in *United Mine Workers* v. *Arkansas Oak Flooring Co.*, 351 U. S. 62, the court below concluded that the Board lacked power to condition the future recognition of an illegally assisted union upon a Board election and certification. While the instant case involves a noncomplying union which, for that reason, is ineligible for a Board certification as long as it remains out of compliance, the court below does not make clear whether, in its view, the Board's remedy is invalid as applied to all unlawfully assisted unions, whether or not the union in question has met the statutory filing requirements. Whatever the scope of the decision below, we

think that the court's reliance on *Arkansas Oak Flooring* is misplaced and, further, that the considerations which we have set forth *supra*, pp. 13–22, in support of the Board's remedy apply as much to an illegally assisted noncomplying union as to a complying union. Indeed, if a distinction were to be drawn between the two, and the remedy held valid as to a complying union but not as to a noncomplying union, the anomalous result would be that noncompliance entitles the illegally assisted union to special treatment.

1. In *Arkansas Oak Flooring, supra,* this Court held that the preemptive scope of the federal Act does not turn upon the union's compliance with the filing requirements and rejected the contention that picketing for recognition by a noncomplying union which was ineligible for Board certification as bargaining representative was illegal and therefore subject to state restraints. In arriving at this conclusion the Court stressed, *inter alia,* that the representative status of a bargaining agent under the Act need not necessarily be established through a Board election and certification and that an employer may recognize a noncomplying union if a majority of the employees have authorized it to serve as their representative. This observation was premised, however, upon the basic and unquestioned assumption that the union had not been tainted with unlawful employer support and was in fact the freely chosen agent of the employees. 351 U. S. at 69, 74–75. But it is an altogether different matter where, as here, the union has been the willing beneficiary of the employer's unfair labor practices and owes its status in some measure to illegal support. Where

such support and interference has influenced the employees' choice, as it manifestly did here, the Act vests power in the Board, regardless of the employees' wishes, "to select the method of determining what union, if any, employees desire as a bargaining agent". *National Labor Relations Board* v. *Falk Corporation*, 308 U. S. 453, 458.[16] And for the reasons already stated, a secret election conducted under appropriate safeguards is best calculated to neutralize the effects of such employer assistance and restore to the employees the freedom of choice which is lawfully theirs.

The union's noncompliance and its consequent ineligibility for Board certification as long as it remains out of compliance does not render the Board's choice of remedies any less necessary or appropriate. As the Court observed in *Arkansas Oak Flooring*, a union by electing not to comply with the statutory filing requirements does not "eliminate the applicability of the * * * Act" nor "exempt itself from other applicable provisions." (351 U. S. at 70, 74.) Such applicable provisions include Section 10 (c) which, as this Court has long held, entrusts to the Board's "expert judgment" the determination of "how the effect of prior unfair labor practices may be expunged" so as to restore "the

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[16] Accord: *National Labor Relations Board* v. *Newport News Shipbuilding & Dry Dock Co.*, 308 U. S. 241, 251; *National Labor Relations Board* v. *Southern Bell Telephone Co.*, 319 U. S. 50, 59–60; *National Labor Relations Board* v. *Automotive Maintenance Machinery Co.*, 315 U. S. 282, reversing, 116 F. 2d 350, 355–356 (C. A. 7); *National Labor Relations Board* v. *Red Arrow Freight Lines, Inc.*, 180 F. 2d 585, 586–587 (C. A. 5), certiorari denied, 340 U. S. 823; *Donnelly Garment Co.* v. *National Labor Relations Board*, 165 F. 2d 940, 942 (C. A. 8).

freedom of choice guaranteed to the employees by the Act." *International Association of Machinists* v. *National Labor Relations Board*, 311 U. S. 72, 82. The noncomplying status of an assisted union obviously affords the Board no reason to believe that employer preference has had any the less "telling effect" (*ibid.* at 78) upon employees or that, absent the safeguards of a Board election, they will be any less subject to a continuing restraint in the future.

Indeed, in the case of a noncomplying union there is, perhaps, an even greater need for the Board's order. The decision below, as we have stated, leaves it to the offending employer and the assisted union to determine that "normalcy" has been restored and that the employees have regained their freedom of action. But if the matter is left to them, there is a serious risk that the effects of the employer's illegal assistance will be perpetuated, with the consequent impairment of the employees' freedom of choice. The employer, on the one hand, is naturally predisposed to deal with the union which has been the recipient of his favors, in preference to other and perhaps more vigorous rival unions. The union, on the other hand, by reason of its noncompliance may be disposed to permit, or acquiesce in, continuing employer influence in order to gain or retain recognition. Though of "no value as a bargaining point" insofar as a complying union with a right enforceable by law is concerned, employer recognition has assumed especial "importance and value" to those unions foreclosed from invoking Board processes to protect their status. Kearns, *Non-Communist Affi-*

davits Under the Taft-Hartley Act, 37 Geo. L. J. 297, 304 (1949). For this reason, as has been recognized, such unions "in many instances will be amenable to moderate concessions" in order to gain or insure continued recognition.[17] With these factors operating, the safeguards of a Board election are particularly appropriate to insure that the Act is not "evaded by indirections or formal observances which in fact defy it." *National Labor Relations Board* v. *Express Publishing Co.*, 312 U. S. 426, 436–437.

Moreover, to exempt the noncomplying union from establishing its status in a Board-conducted election would accord it preferential treatment over a complying union. It would be wholly paradoxical to afford such unions a more favored position than is accorded to complying unions. While the Act does not illegalize the activities of noncomplying unions, the fact is that in enacting Section 9 (f), (g) and (h) and thereby precluding access to Board process to such unions, Congress sought to "make it difficult for" such unions "to remain effective." *American Communications Association* v. *Douds*, 339 U. S. 382, 389–390.[18] In the light of this Congressional attitude

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[17] S. Rept. No. 374, Views of Certain Members of the Joint Committee on Labor-Management Relations, 81st Cong., 1st Sess., pp. 13–14. Accord: Kearns, *Non-Communist Affidavits Under the Taft-Hartley Act*, 37 Geo. L. J. 297, 304 (1949); Greenwald, *Non-Communist Affidavits: Taft-Hartley Sound and Fury*, 12 La. L. Rev. 407, 419, n. 43 (1952); Scanlan, *The Communist Dominated Union Problem*, 28 Notre Dame Law, 458, 464–465 (1953); *Disestablishment: NLRB's Waning Remedy and the International Unions*, 29 Ind. L. J. 219, 233 (1954).

[18] See also, *Fay* v. *Douds*, 172 F. 2d 720, 724 (C. A. 2); Cox, *Some Aspects of the Labor Management Relations Act 1947*, 61

and the serious disabilities imposed by the Act for noncompliance, there is, as Judge Washington stated (R. 59), "no basis in principle for giving a non-complying union an advantage which complying unions do not have. In practice to do so may encourage unions not to comply with the Act"—a result wholly at odds with the Congressional purpose underlying Section 9 (f), (g) and (h). Accordingly, the Board's order is necessary "to give coordinated effect to the policies of the Act" (*National Labor Relations Board* v. *Seven-Up Bottling Co. of Miami, Inc.*, 344 U. S. 344, 348).[19]

Finally, still another factor militates against the correctness of the ruling below. As this Court has noted, "compliance at a given moment, or continuous compliance [is] a matter of happenstance." *National Labor Relations Board* v. *Dant & Russell*, 344 U. S. 375, 383. If the validity of the Board's order turns upon this "matter of happenstance," then it might

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Harv. L. Rev. 1; 35-36; Kearns, *Non-Communist Affidavits Under the Taft-Hartley Act*, 37 Geo. L. J. 297, 301-302, 305 (1949); *Developments in the Law—The Taft-Hartley Act*, 64 Harv. L. Rev. 781, 793-794 (1951).

[19] As noted in *Arkansas Oak Flooring*, *supra*, at p. 70, n. 5, the Board has consistently held that noncomplying unions have no "power to immunize themselves against decertification proceedings by their very refusal to" file the affidavits which the Act requires since according such unions a more favored position than that of complying unions under the Act would lend "[e]ncouragement * * * to noncompliance." *Harris Foundry & Machine Co.*, 76 NLRB 118, 120. For Congressional awareness and approval of the Board's rationale, see Report of the Joint Committee on Labor-Management Relations, S. Rept. No. 986, Pt. 1, 80th Cong., 2d Sess., pp. 14, 33, and Pt. 3, 80th Cong., 2d Sess., pp. 39-40, 45.

follow that the order may be invalid when issued because the union is then out of compliance but thereafter validated in the event that the union elects to comply. Or, to put the reverse case, the union's subsequent noncompliance following issuance of the order might have the effect of invalidating it. These incongruous consequences furnish an additional reason for holding that "noncompliance * * * should not work to frustrate the Act's purpose of remedying unfair labor practices" (*Dant & Russell, supra,* at 383–384) through remedies which are otherwise valid and appropriate.

The respondent union further suggests that since it is free to comply or not with the filing requirements of Section 9 (f), (g) and (h), the Board's order, which in effect requires it to comply if it wishes to gain recognition as the employees' bargaining representative, is of a "penal" rather than a "remedial" character, and is therefore beyond the scope of the Board's authority. But, as this Court has said, it is best "to avoid entering into the bog of logomachy, as we are invited to, by debate about what is 'remedial' and what is 'punitive.' It seems more profitable to stick closely to the direction of the Act by considering what order does, as this does, and what order does not, bear appropriate relation to the policies of the Act." *National Labor Relations Board* v. *Seven-Up Bottling Co. of Miami, Inc.,* 344 U. S. 344, 348. In adopting a measure uniformly applied to remedy like employer misconduct, the Board has added no special liability because of respondent's noncomplying status; it has merely refused, as the dissenting opinion below noted

(R. 58–59), to discriminate in favor of respondent or other noncomplying unions by giving them an advantage over those unions choosing to comply. If the requirement of a Board election is remedial and valid insofar as a complying union is concerned and bears appropriate relation to the policies of the Act, then it is not easy to understand why the same requirement in the case of a noncomplying union is penal and invalid.

To be sure, if the respondent union persists in refusing to comply with the filing requirements, it may not gain recognition from the employer as the employees' bargaining representative even if the employees continue to favor it. But the position in which the union thus finds itself stems from its own participation in the unfair labor practices committed here and its willing acceptance of illegal employer support. Moreover, the union can readily extricate itself from this predicament by complying with the Act and thus put itself into a position where it may invoke the Board's process for the determination of its status.[20]

An even more basic answer, however, is that respondent's argument totally misconceives the nature of the Board's order. The Board is not concerned here with punishing or with effecting an alteration in

[20] That the latter course is open to respondent clearly appears from the testimony of John L. Lewis in Hearing Before the Committee on Labor and Public Welfare, U. S. Senate, Pt. 4, 83rd Cong., 1st Sess., pp. 1908, 1920. Nor is this course foreclosed in the case of any noncomplying union since its members are free to divest themselves, as the Act intends, of any officer not willing to file the affidavits there required. See *American Communications Association* v. *Douds*, 339 U. S. 382, 390, 412.

the position of this or any noncomplying union; rather, the Board is solely concerned with restoring the *status quo* so that the employees may "have the complete and unhampered freedom of choice," in the selection of their bargaining representative, "which the Act contemplates." *International Association of Machinists* v. *National Labor Relations Board*, 311 U. S. 72, 80. The "injury" claimed by respondent thus at best would "be merely an incidental effect of an order which in other respects effectuates the policies of the federal Act." *National Labor Relations Board* v. *Gullett Gin Co.*, 340 U. S. 361, 365.

II. EVEN IF THE BOARD'S ORDER WERE INVALID, THE COURT BELOW ERRED IN PRESCRIBING ITS OWN REMEDY INSTEAD OF REMANDING THE CASE TO THE BOARD.

In addition to holding the Board's order improper, the court below, as stated above, p. 6, prescribed an amendment to the order and entered a decree enforcing the order as amended. The amendment in substance permits the employer to recognize the Union after compliance with the other provisions of the Board's order and after notices have been posted for 60 days (R. 54–55, 57, 66–67). In thus rewriting the order to prescribe its own remedy for the unfair labor practices here committed, without affording the Board an opportunity to consider alternative remedies, the court below "usurped an administrative function" (*Federal Power Commission* v. *Idaho Power Co.*, 344 U. S. 17, 20). As this Court has emphasized, "the relation of remedy to policy is peculiarly a matter for

administrative competence * * *." *Phelps Dodge Corp.* v. *National Labor Relations Board*, 313 U. S. 177, 194.[21] The Board believes, correctly we think, that its certification is an indispensable condition to future recognition of an illegally assisted union; however, if that view is rejected, the Board may perhaps devise other measures which will enable it to make certain that the employees' choice of bargaining representative is in fact made in an atmosphere free of restraint and coercion and which do not leave that determination, as the decision below in effect does, to the employer and the assisted union.[22] Accordingly, if the Court should disagree with our views as to the validity of the Board's present order, we think that orderly administration of the Act, with due regard to the respective functions of the Board and reviewing courts, would suggest a remand of this case to the Board for the purpose of considering alternative remedies. *Federal Power Commission* v. *Idaho Power Co.*, 344 U. S. 17, 20–21. And see, *Securities and Exchange Commission* v. *Chenery Corp.*, 318 U. S. 80, 88,

[21] Accord: *National Labor Relations Board* v. *Seven-Up Bottling Co. of Miami, Inc.*, 344 U. S. 344, 346; *National Labor Relations Board* v. *Link-Belt Co.*, 311 U. S. 584, 600, and cases cited.

[22] To suggest a possible alternative course, without prejudging its legality or its acceptability to the Board, the Board might conduct an election among the employees and certify the union if it wins the election provided it is in compliance but otherwise certify only the arithmetical results. See *Harris Foundry & Machine Co.*, 76 NLRB 118; *Bethlehem Steel Co.*, 79 NLRB 1271; but cf. *Herman Loewenstein, Inc.*, 75 NLRB 377; *Darling and Company*, 116 NLRB 374.

94–95. *American Newspaper Publishers Association* v. *National Labor Relations Board*, 190 F. 2d 45, 48–49 (C. A. 7), certiorari denied, 344 U. S. 812; *National Labor Relations Board* v. *Thayer Co.*, 213 F. 2d 748, 755 (C. A. 1), certiorari denied, 348 U. S. 883.

III. THE COURT BELOW FURTHER ERRED IN MODIFYING THE NOTICE PROVISION OF THE BOARD'S ORDER

The court below also modified the Board's order by striking from the Notice to be posted by the Company all references to the Teamsters Union, which, as the Board and the court found, was the prime target of the unfair labor practices here committed (R. 55–57, 66–68). No contention concerning the propriety of the Notice in this respect was ever raised by the parties before the Board or before the court below (*supra*, p. 4). We submit that Section 10 (e) of the Act, which provides that "[n]o objection that has not been urged before the Board * * * shall be considered by the court" (in the absence, as here, of any extraordinary circumstances) as well as settled principles of law clearly precluded independent review of the Board's notice requirements by the court below. *National Labor Relations Board* v. *Cheney California Lumber Co.*, 327 U. S. 385, 388–389; *Marshall Field & Co.* v. *National Labor Relations Board*, 318 U. S. 253, 255; *National Labor Relations Board* v. *Seven-Up Bottling Co. of Miami, Inc.*, 344 U. S. 344, 350. See also *Federal Power Commission* v. *Colorado Interstate Gas Co.*, 348 U. S. 492, 493–494, 498–499.

The Notice prescribed by the Board is in any event manifestly proper. As this Court has long made clear, it is "within the authority conferred on the

Board by § 10 (c) of the Act" to require an announcement informing employees, as here, that their employer will forswear precisely those unlawful acts from which he "is ordered to cease and desist." *National Labor Relations Board* v. *Express Publishing Co.*, 312 U. S. 426, 438–439. In order to give public assurances to employees of their complete freedom to join any union in which membership has been specifically discouraged by their employer, the Board has directed that such organizations be named in the employer's pledges of non-interference since its earliest days, with the approval of this Court and the courts of appeals generally.[23] The suggestion of the court below that a like requirement here might "indicate that the Board prefers" the union so disfavored (R. 55) has hitherto been rejected as wholly without merit;[24] and it is further negated by the Notice itself,

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[23] See *Jones & Laughlin Steel Corp.*, 1 NLRB 503, 518, affirmed, 301 U. S. 1, 49, and enforced, 90 F. 2d 678, 679 (C. A. 5); *Mackay Radio & Telegraph Co.*, 1 NLRB 201, 235, cited at 87 F. 2d 611, 612 (C. A. 9), and affirmed, 304 U. S. 333, 341, 343, 348; *H. J. Heinz Co.* v. *National Labor Relations Board*, 311 U. S. 514, 522. And see also *National Labor Relations Board* v. *Harbison-Walker Refractories Co.*, 135 F. 2d 837, 839–840 (C. A. 8); *National Labor Relations Board* v. *Standard Oil Co.*, 142 F. 2d 676, 677 (C. A. 6), certiorari denied, 323 U. S. 791; *National Labor Relations Board* v. *Moore-Lowry Flour Mills Co.*, 122 F. 2d 419, 429 (C. A. 10), enforcing 21 NLRB 1040, 1057–1058; *Butler Brothers* v. *National Labor Relations Board*, 134 F. 2d 981, 985 (C. A. 7), certiorari denied, 320 U. S. 789; *National Labor Relations Board* v. *Weirton Steel Co.*, 135 F. 2d 494, 499 (C. A. 3).

[24] *National Labor Relations Board* v. *Clark Phonograph Record Co.*, 176 F. 2d 341, 344 (C. A. 3), citing, as holding to the same effect, *National Labor Relations Board* v. *Arton Studios, Inc.*, 168 F. 2d 521 (C. A. 3) (*per curiam*); *National Labor*

which expressly assures employees that they are free to join or not to join the "Teamsters" or "any other labor organization" (R. 39–40). Indeed, as the court below has itself stated in another case approving identical provisions of a Board order issued in like circumstances: "References in the Board's order to certain labor organizations by name are not understood by us to require or even to intimate that those organizations or organizations of that type must be chosen or are to be given any preference whatsoever over any other organization by the [Company] employees," nor, "as we read the Board's order," does it make any attempt to "dictate to employees what labor organization shall represent them." *Aerovox Corporation* v. *National Labor Relations Board*, 211 F. 2d 640, 641 (C. A. D. C.), certiorari denied, 347 U. S. 968.

Relations Board v. *Baldwin Locomotive Works*, 128 F. 2d 39, 51 (C. A. 3). And see *National Labor Relations Board* v. *Brown Paper Mill Co.*, 198 F. 2d 867, 872 (C. A. 5), certiorari denied, 310 U. S. 651.

CONCLUSION

For the reasons stated, the judgment below should be reversed and the case should be remanded with directions to enforce the Board's order.

Respectfully submitted.

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OCTOBER 1957.

APPENDIX.

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C. 151, *et seq.*), are as follows:

RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3).

UNFAIR LABOR PRACTICES

SEC. 8. (a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it * * *.

* * * * *

REPRESENTATIVES AND ELECTIONS

SEC. 9. * * *

(c) * * * (2) In determining whether or not a question of representation affecting commerce exists, the same regulations and rules of decision shall apply irrespective of the identity of the

persons filing the petition or the kind of relief sought, and in no case shall the Board deny a labor organization a place on the ballot by reason of an order with respect to such labor organization or its predecessor not issued in conformity with section 10 (c).

* * * * * *

(f) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless such labor organization and any national or international labor organization of which such labor organization is an affiliate or constituent unit (A) shall have prior thereto filed with the Secretary of Labor copies of its constitution and bylaws and a report, in such form as the Secretary may prescribe, showing—

(1) the name of such labor organization and the address of its principal place of business;

(2) the names, titles, and compensation and allowances of its three principal officers and of any of its other officers or agents whose aggregate compensation and allowances for the preceding year exceeded $5,000, and the amount of the compensation and allowances paid to each such officer or agent during such year;

(3) the manner in which the officers and agents referred to in clause (2) were elected, appointed, or otherwise selected;

(4) the initiation fee or fees which new members are required to pay on becoming members of such labor organization;

(5) the regular dues or fees which members are required to pay in order to remain members in good standing of such labor organization;

(6) a detailed statement of, or reference to provisions of its constitution and bylaws showing the procedure followed with respect to, (a) qualification for or restrictions on membership,

(b) election of officers and stewards, (c) calling of regular and special meetings, (d) levying of assessments, (e) imposition of fines, (f) authorization for bargaining demands, (g) ratification of contract terms, (h) authorization for strikes, (i) authorization for disbursement of union funds, (j) audit of union financial transactions, (k) participation in insurance or other benefit plans, and (l) expulsion of members and the grounds therefor;

and (B) can show that prior thereto it has—

(1) filed with the Secretary of Labor, in such form as the Secretary may prescribe, a report showing all of (a) its receipts of any kind and the sources of such receipts, (b) its total assets and liabilities as of the end of its last fiscal year, (c) the disbursements made by it during such fiscal year, including the purposes for which made; and

(2) furnished to all of the members of such labor organization copies of the financial report required by paragraph (1) hereof to be filed with the Secretary of Labor.

(g) It shall be the obligation of all labor organizations to file annually with the Secretary of Labor, in such form as the Secretary of Labor may prescribe, reports bringing up to date the information required to be supplied in the initial filing by subsection (f) (A) of this section, and to file with the Secretary of Labor and furnish to its members annually financial reports in the form and manner prescribed in subsection (f) (B). No labor organization shall be eligible for certification under this section as the representative of any employees, and no complaint shall issue under section 10 with respect to a charge filed by a labor organization unless it can show that it and any national or international labor organization of which it is an affiliate or constituent unit has complied with its obligation under this subsection.

(h) No investigation shall be made by the Board of any question affecting commerce con-

cerning the representation of employees, raised by a labor organization under subsection (c) of this section, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless there is on file with the Board an affidavit executed contemporaneously or within the preceding twelve-month period by each officer of such labor organization and the officers of any national or international labor organization of which it is an affiliate or constituent unit that he is not a member of the Communist Party or affiliated with such party, and that he does not believe in, and is not a member of or supports any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods. The provisions of section 35 A of the Criminal Code shall be applicable in respect to such affidavits.

PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. * * *

* * * * * *

(c) * * * If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act: * * * *And provided further*, That in determining whether a complaint shall issue alleging a violation of section 8 (a) (1) or section 8 (a) (2), and in deciding such cases, the same regulations and rules of decision shall apply irrespective of whether or not

The Board order in the instant case does not fit the facts of the particular situation being dealt with by it. See *Williams Motor Co.* v. *National Labor Relations* Board, 128 F(2d) 960 at 965.

D. The Order of the Board Was Punitive

The Board order penalizes District 50 by depriving it of the right of election to file or not to file, afforded it by the Act.

It is submitted that the Labor Board has no punitive powers. Its powers are remedial only. See *N.L.R.B.* v. *Flotill Products, Inc.*, 180 F(2d) 441 (C.A. 9).

In the language of Mr. Justice Roberts: "Section 10(c) was not intended to give the Board power of punishment or retribution for past wrongs or errors. Action under that Section must be limited to the effectuation of the policies of the Act." *National Labor Relations Board* v. *Newport News Shipbuilding and Dry Dock Company*, 308 U.S. 241 at 250.

The Board cannot impose sanctions not covered by the Act. See *Leedom* v. *International Union*, 352 U.S. 145, and *Meat Cutters* v. *Labor Board*, 352 U.S. 153.

The order cannot be justified by orders in the case of a dominated union. In such case the employer sets up a mechanism to thwart the basic purpose of the Labor Management Relations Act of 1947, as amended. There is no freedom of choice in a dominated union. There is no collective bargaining between the employer and a representative freely chosen by his employees when the union speaking for the employees is a mere creature of the employer. It amounts to no

ployees to bargain collectively through representatives of their own choosing. Section 10 (c) of the Act confers remedial power upon the Board, "to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this sub-chapter."

The language of Mr. Justice Stone in *National Labor Relations Board* v. *Pennsylvania Greyhound Lines*, 303 U.S. 261 at 267 is: "To secure to employees the benefits of self-organization and collective bargaining through representatives of the employees' own choosing, the Board was authorized by Section 10 (c) to order the abandonment of unfair labor practices and to take affirmative action which would carry out the policy of the Act."

The "unless and until" certified form of order deprives the employees of the rights guaranteed them under the Act, and the union the right of representation given it under the Act.

C. The Order of the Board Was Not an Appropriate Order

Mr. Chief Justice Stone, in *National Labor Relations Board* v. *Pennsylvania Greyhound Lines*, supra, quoted from the Report of the House Committee on Labor, H. R. 1147, 74th Cong., 1st Sess., p. 3 as follows: "The orders will, of course, be adapted to the need of the individual case." (p. 268)

The Board must order an appropriate remedy in order to obtain enforcement from the Court of Appeals. See *National Labor Relations Board* v. *Bradford Dyeing Association*, 310 U.S. 318 at 342.

Poultry Corp. v. *U. S.*, 295, U.S. 495, the Board cannot usurp legislative power. See too *Panama Refining Company* v. *Ryan*, 293 U.S. 388.

This court announced in *Colgate-Palmolive-Peet Co.* v. *N.L.R.B.*, 338 U.S. 355 at 363: "It is not necessary for us to justify the policy of Congress. It is enough that we find it in the statute. That policy cannot be defeated by the Board's policy, which would make an unfair labor practice out of that which is authorized by the Act. The Board cannot ignore the plain provisions of a valid contract made in accordance with the letter and the spirit of the statute and reform it to conform to the Board's idea of correct policy. To sustain the Board's contention would be to permit the Board under the guise of administration to put limitations in the statute not placed there by Congress."

The order complained of is compulsion by indirection. The Congress carefully refrained from making the filing compulsory. Evidently the sponsors of the Act did not dare to go that far. The Labor Board now through the device of an order valiantly seeks to do that which Congress was unwilling to do.

B. The Order of the Board Violates the Policy of the United States

The policy of the United States is in the last paragraph of Section 1 of the Act declared to be the protection of "the exercise by workers of full freedom of association, self-organization and designation of representatives of their own choosing." Section 7 further implements the freedom guaranteed the em-

and dealing with District 50 "unless and until it shall be certified as such representative by the Board" are in agreement that such an order should not be allowed to stand.

The *Wemyss* case, 212 F(2d) 465, referred to by Washington, J., in his dissenting opinion, was decided before this court handed down its opinion in the *Arkansas Oak Flooring* case. Furthermore, that case deals with a contract containing a union security provision which, under Section 8 (a) (3) of the Act, cannot be entered into unless the employer has received from the Board a notice of compliance with Section 9 (f), (g) and (h). Insofar as we can determine from the opinion, the arguments we advanced in the court below were not made in the *Wemyss* case.

It seems clear that the effect of an "unless and until" certified order as applied to unions which do not file under Section 9 (f), (g) and (h) is to work an administrative amendment to an Act of Congress.

Let us suppose the National Labor Relations Board promulgated a rule or regulation as follows: "Hereafter all unions must file the reports and affidavit designated in Section 9 (f), (g) and (h) in order to be able to act as the representative of the majority of employees." It would be instantly apparent that such a rule or regulation is an usurpation of the legislative function. If Congress cannot delegate a legislative power to the Chief Executive, as held in the case of *A. L. A. Schechter*

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start upon another device and stratagem to escape the dictates of the law. The Board called it a Notice to Show Cause why it should not make application to that court for permission to dismiss the complaint. This after years of litigation.

2. In support of its application to the Board for modification of its order by deleting Paragraphs 1(d) banning recognition of District 50 and 2(c) dealing with District 50 "unless and until the said labor organization shall have been certified as such representative by the Board," District 50 urged the two grounds set up at Page 4 in petitioner's statement, and additional grounds that the order: (2) was beyond the power of the Board; (4), (9) was a ban in perpetuity; (5), (6) and (7) set up a limitation of certification as a condition precedent to the right of representation; (8) cut off a right of representation unlawfully, and (11) in effect, was administrative legislation contrary to law. (R. 725-728)

REASONS FOR DENYING THE WRIT:

A. The Decision of the Court Below Was Correct

The opinion of this court in *United Mine Workers of America, et al.* v. *Arkansas Oak Flooring Company*, 351 U.S. 62, is such a full and complete exposition of the law relative to those unions which elect not to file the reports and affidavits specified in Section 9 (f), (g) and (h) of the Labor Management Relations Act of 1947, as amended, that United States Courts of Appeal do not, we believe, have any need of further clarification by this court.

The two United States Courts of Appeal[1] which have since considered the order banning recognition

[1] Petitioner, in a footnote, states that no review was sought in the other case, District 50 v. National Labor Relations Board, 234 F. 2d 565 (4th Circuit), "because the court there remanded the case on the merits." The Board, after doing nothing to carry out that court's order of June 5, 1956, did on December 28, 1956,

QUESTIONS PRESENTED

We state the questions presented as follows:

1. May the National Labor Relations Board, by the device and stratagem of an "unless and until" certified order, amend the Labor Management Relations Act of 1947, as amended, so as to compel a labor union to file the reports and affidavits specified in Sections 9.(f), (g) and (h) of the Act under penalty of disability in perpetuity to act as representative of employees, should it fail so to do?

2. Where the facts are undisputed, the law is plain, and the order of the Board clearly thwarts the policy of the Act, must a United States Court of Appeals, on petition for review, prolong litigation by remanding a case for the Board to redraft its order? In short, does the Act give the court the power to modify an order of the Board?

STATUTE INVOLVED

The pertinent sections of the Labor Management Relations Act of 1947, as amended, (61 Stat. 136, 29 U.S.C. 151, et seq.) not in Petitioner's Appendix are reprinted in this Appendix, infra, pp. 27-31.

STATEMENT

The statement of petitioner needs to be supplemented by the following additional information:

1. District 50, not being a party to the proceedings before the Trial Examiner and the Board in the first instance, had no legal opportunity to dispute the findings of fact and, therefore, has never at any time disputed the findings of fact made by the Trial Examiner and approved by the Board.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 672

NATIONAL LABOR RELATIONS BOARD, *Petitioner*

v.

DISTRICT 50, UNITED MINE WORKERS OF AMERICA, and BOWMAN TRANSPORTATION, INC., *Respondents*

BRIEF IN OPPOSITION OF DISTRICT 50, UNITED MINE WORKERS OF AMERICA, RESPONDENT

OPINIONS BELOW

The majority and dissenting opinions of the court below (Appendix, infra, pp. 11-27) are reported in 237 F(2d) 585-592. The findings, conclusions, decision and order of the Board (R. 675-703, 714-719) are reported at 112 NLRB 387, and its Supplemental Decision and Order (R. 730-736) is reported at 113 NLRB 786.

JURISDICTION

This court has jurisdiction as stated in the petition.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

NATIONAL LABOR RELATIONS BOARD, *Petitioner*

v.

DISTRICT 50, UNITED MINE WORKERS OF AMERICA, and BOWMAN TRANSPORTATION, INC., *Respondents*

BRIEF IN OPPOSITION OF DISTRICT 50, UNITED MINE WORKERS OF AMERICA, RESPONDENT

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